

HASTINGS AND DAKOTA RAILWAY COMPANY.

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LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

*Pursuant to House resolution dated December 20, 1892, information relating to the grant for the Hastings and Dakota Railway Company of Minnesota.*

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JANUARY 17, 1893.—Referred to the Committee on the Public Lands and ordered to be printed.

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DEPARTMENT OF THE INTERIOR,  
*Washington, D. C., January 16, 1893.*

SIR: I have the honor to herewith inclose copy of the report of the Commissioner of the General Land Office, and accompanying papers, containing the information requested by House resolution of December 20, 1892, relative to the grant for the Hastings and Dakota Railway Company of Minnesota.

As the Commissioner accompanies his report with a copy of his letter to the Secretary, of November 26, 1892, I also inclose copy of my answer thereto, dated December 12, 1892.

Very respectfully,

JOHN W. NOBLE,  
*Secretary.*

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

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DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., January 6, 1893.*

SIR: December 29, 1892, was received in this office (by reference from the honorable First Assistant Secretary, dated December 23, 1892), "for early report, in duplicate," a resolution adopted December 20, 1892, by the House of Representatives, as follows:

*Be it resolved by the House of Representatives of the United States, That the honorable Secretary of the Interior be, and he is hereby, requested to furnish to the House such information as the Department of the Interior may possess relative to the action taken by the State of Minnesota to amend the charter and to forfeit the franchises of*

the Hastings and Dakota Railroad Company, one of the land-grant companies of the United States.

Also to report the quantity of lands, if any, that are still claimed by that corporation, or those claiming to represent it; and further, as to whether such lands are claimed by settlers, and what action, if any, has been taken by the Interior Department in relation to the same.

The grant for the Hastings and Dakota Railway was made to the State of Minnesota by act of Congress approved July 4, 1866 (14 Stat., 87); was accepted by an act of the State legislature approved March 7, 1867 (Spec. Laws Minn., 1867, pp. 11 to 14), and conferred upon the Hastings, Minnesota River and Red River of the North Railroad Company, which was organized under act of February 20, 1857 (Terr. Laws Minn., 1857, pp. 157 to 165), and reorganized and continued by and under the State law of March 3, 1866 (Spec. Laws Minn., 1866, pp. 25 to 37), which acts were amended by the act of March 7, 1867. The charter was again amended and authority for changing the name of the company was conferred by the State law of March 9, 1867. (Spec. Laws Minn., 1867, pp. 31 to 35.)

Other acts extending the time for the completion of the line of road and amending the charter of the company were passed by the State legislature March 4, 1869 (Spec. Laws, 231), March 2, 1871 (Spec. Laws, 261 to 263), and March 7, 1878 (Spec. Laws, 333 to 337), but this office has no information respecting any act of the State legislature looking to the forfeiture of the company's charter and franchises.

The attention of this office was directed, by appeals from local land office decisions refusing entry applications for lands in the limits of the grant for this railroad, to the fact that the charter of the company had been annulled by *quo warranto* proceedings before the supreme court of Minnesota, and the result of an examination of the proceedings had was laid before you in my report of November 26, 1892, two copies of which are transmitted herewith.

Other matters referred to in the Congressional resolution under consideration were mentioned, and facts given, in my report of November 26, 1892. Facts not mentioned in said report are: That by decision of November 17, 1892, this office held for cancellation indemnity selections on account of the Hastings and Dakota grant embracing about 66,000 acres of land, and a motion for the review of that decision has been filed and is now pending here; that by letter of December 12, 1892, this office forwarded to you a list of 9,905.38 acres of land within the primary limits of said railroad, certified as having inured to said grant, and that said list was approved by you December 19, 1892, leaving a total of less than 8,000 acres of land within the primary limits yet available for the grant.

A large number of applications for the entry of lands, in both the primary and indemnity limits of the grant, have come before this office from time to time. Those pertaining to lands embraced in the primary limits and covered by the approved lists, referred to herein and in the report of November 26, 1892, have been denied, and the entire 8,000 acres yet available for the grant are involved in applications, by persons alleging settlement thereon, for entry pending here or, on appeal, before the Department.

Very few entry applications for indemnity lands pertaining to this grant have been denied by this office, action upon that class (several hundred applications) having been deferred pending the consideration and determination of questions (independent of the alleged settlers' claims) pertaining to the grantee's right of selection.

The papers transmitted with the departmental reference of December 23, 1892, are returned herewith.

Very respectfully,

W. M. STONE,  
*Commissioner.*

The SECRETARY OF THE INTERIOR.

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DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., November 26, 1892.

SIR: I am in receipt of your note of February 1, 1892, relative to the Hastings and Dakota Railway grant, and return the papers therewith inclosed with the following report and opinion:

This grant was made by act of Congress approved July 4, 1866 (14 Stat., 87), to the State of Minnesota for the purpose of aiding in the construction of a railroad "from Hastings, through the counties of Dakota, Scott, Carver, and McLeod, to such point on the western boundary of the State as the Legislature of the State may determine." The third section of the act provides "that the lands hereby granted shall be subject to the disposal of legislature of Minnesota *for the purpose aforesaid and no other*," and by the fourth section the manner is prescribed in which "the lands hereby granted shall be disposed of by said State *for the purposes aforesaid only*."

The grant was duly accepted by the State legislature, and by due process was conferred upon a corporation finally known as the Hastings and Dakota Railway Company, which corporation assumed the task of constructing the road within the period prescribed by statute and of operating it as a first-class railroad. The line of road, as located in accordance with the acts of the State legislature, extends from Hastings, on the Mississippi River, to Ortonville, on the western boundary of the State, the total length being 202.1 miles. The company completed that part of the road extending from Hastings to Glencoe, 74 miles, within the statutory period. The remaining 128.1 miles of road were completed after the expiration of that period.

About July 1, 1872, the Hastings and Dakota Railway Company sold that part of its road between Hastings and Glencoe, with all equipment, to the Chicago, Milwaukee and St. Paul Railway Company, and about January 1, 1880, the portion of the road between Glencoe and Ortonville, having been completed, was conveyed to the company last named, with its entire equipment. After disposing of this line the Hastings and Dakota Railway Company continued to own and operate a branch line of railway (for which no grant of lands was made, however) between Minneapolis and a point on the main line at or near Benton until about December 8, 1882, when said branch line was conveyed to the Milwaukee Company, and the Hastings and Dakota Company ceased to own or operate any railroad within the State of Minnesota, though having reserved the lands granted in aid of the line between Hastings and Ortonville, said company continued, as a corporation, under its charter from the State of Minnesota, to own and dispose of said lands.

*Quo warranto* proceedings were instituted in the supreme court of Minnesota against the Hastings and Dakota Railway Company by the attorney-general of the State, and the case was considered, with an-

other of the same character against the Minnesota Central Railway Company, and decided December 22, 1886 (36 Minn., 246-270), and the following extracts are made from the decision, viz:

Upon the facts admitted on the face of the record, the Attorney-General applies for judgment dissolving these corporations on the ground of nonuser of their franchises, and suspension of their business as railroad companies. \* \* \* These railroad corporations were created by the State to maintain, have, use, and operate railroads. This was their lawful business, and the end and object for which they were created, and the consideration and condition upon which they were given their franchises and special privileges, and endowed with land grants. \* \* \* The right to acquire and dispose of these lands \* \* \* are corporate franchises, but ancillary and subordinate to the main purpose and object for which the companies were chartered. The failure to discharge their duties to the public, and the non-user or suspension of their principal business as railroad companies, are a sufficient ground for an absolute forfeiture of their corporate rights. \* \* \* By the consent of the State such subordinate franchises may exist and continue to be exercised independently of the franchises to construct and operate railroads. \* \* \* But the right to exercise such franchises can not lawfully survive after a sale of the railroads, and a suspension of their principal business, unless by the authority and consent of the State, expressed or clearly implied; and the consent, ratification, or waiver must be through legislative enactments. The State is not, in such case, bound by the acts of its executive officers. \* \* \* The discussion in these cases is therefore narrowed down to the question whether the legislature has authorized or consented to such a separation of corporate franchises and the continued existence of the corporations for the purpose of holding and disposing of the granted lands, notwithstanding they had ceased to hold or operate any railroads, or has waived the forfeiture resulting from the suspension by them of their lawful business as railroad companies. \* \* \* In respect to the Hastings and Dakota Railway Company, we find no legislative authority or sanction for the suspension by the respondent of its franchises, business, and duties as a railroad company, and the continued, separate, and independent exercise of the business of a land company for the disposition of the land grant acquired by the corporation. \* \* \* The charter and amendments thereto secured to respondent the benefit of the lands granted by Congress to aid in the construction of the main line referred to from Hastings to the west line of the State. \* \* \* Undoubtedly the company acquired an absolute right to the lands actually earned as the construction of the road progressed; but these provisions involve no recognition or sanction by the State of its right to suspend its active exercise of the franchises of a railway company as to the completed roads or otherwise. \* \* \* The charter, clearly, does not contemplate that the title or ownership of these lands should be severed from the proprietorship of the road or any division of the franchises of the company, and we find nothing in any subsequent legislation sanctioning the sale to and operation of the railroad by another company and the survival of the respondent as a separate organization entitled to exercise the separate franchise of holding and disposing of its lands; and we are unable to see how any such arrangement could be valid without the sanction of the legislature. \* \* \* The right to assign corporate franchises is itself a franchise and must be the subject of legislative grant. \* \* \* The charter never contemplated such a division of the corporate franchises, and it has never been authorized or sanctioned by the legislature. No purpose connected with the object of the respondent's organization or its business as a railway corporation is any longer served by its continued existence. \* \* \* We see no escape from the conclusion that, upon the record presented, the State is entitled to judgment of forfeiture, as asked in the information in each of these cases, and it is accordingly so ordered.

Final judgment and decree were rendered and entered in these cases March 23, 1887, and that relating to the Hastings and Dakota Railway Company contains the following language, viz:

It is ordered, adjudged, and decreed that the said respondent, the Hastings and Dakota Railway Company, has forfeited to said state of Minnesota all the liberties, privileges, and franchises of every kind and nature whatever, as a corporation, heretofore granted to the said respondent, the Hastings and Dakota Railway Company, by said State of Minnesota, or acquired by said respondent under any of the laws of said State; and it is further adjudged, ordered, and decreed that the incorporation, charter, corporate and charter rights of the said respondent, the Hastings and Dakota Railway Company, be, and the same are each and all, absolutely vacated and annulled.

It is provided by chapter 34 of the general laws of Minnesota (Laws Minn., 1878, pp. 450 and 451) that—

Corporations whose charters expire by their own limitation, or are annulled by forfeiture or otherwise, shall, nevertheless, continue bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending actions by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property and to divide their capital stock; but not for the purposes of continuing the business for which they were established.

When the charter of a corporation expires, or is annulled, or the corporation is dissolved as provided herein, the district court of the county in which such corporation carries on its business, or has its principal place of business, on application of a creditor, stockholder, or member, at any time within said three years, may appoint one or more persons receivers or trustees, to take charge of its estate and effects and to collect the debts and property due and belonging to it, with power to prosecute and defend actions in the name of the corporation or otherwise, to appoint agents under them and to do all other acts which might be done by such corporation, if in being, that are necessary to the final settlement of the unfinished business of the corporation. The powers of such receivers may be continued as long as the court deems necessary for said purposes.

It does not appear that a receiver for the Hastings and Dakota Railway Company was ever appointed under the State law, and the three years allowed by the statute for the settlement and closing of its concerns expired March 23, 1890.

By resolutions adopted by the stockholders and board of directors of the Hastings and Dakota Railway Company at meetings, said to have been duly convened and held, the vice-president and secretary of said company were authorized to sell the lands and property of the company to Russell Sage, as trustee for the stockholders. Accordingly, on December 9, 1889, said vice-president and secretary, in the name of the Hastings and Dakota Railway Company, party of the first part, executed a deed in favor of Russell Sage, party of the second part, carrying into effect the wishes of the stockholders and board of directors, in the language following:

This indenture witnesseth, that in consideration of the premises and of one dollar to it in hand paid by the party of the second part, the receipt of which is hereby acknowledged, and in order to divide its capital stock among its several stockholders and to secure the fair and proportionate distribution of the proceeds of its lands and other property among its shareholders in the proportion aforesaid, the party of the first part has granted, bargained, and sold, and by these presents does grant, bargain, and sell, convey, and transfer unto the party of the second part, his heirs, assigns, and successors in the trust, and powers in trust hereinafter declared, all and singular the following described lands ———, meaning and intending to convey, transfer, set over, and assign the entire land grant of said party of the first part hereinbefore referred to not heretofore disposed of, whether already certified to the State of Minnesota and deeded by it to the party of the first part or not, and all right to claim certificates and conveyances of any of said lands from the State or United States, and to prosecute any such claims before the Land Department of the United States, or any of its land offices; all of which uncertified lands and the right to prosecute therefor for the consideration aforesaid, the party of the first part hereby sells, grants, transfers, assigns, and sets over unto the party of the second part, together with all actions or rights of action now pending in any court of any State, or of the United States, or in or before the Land Department of the United States, or any of its land offices, or which hereafter may be pending for the recovery of any of the lands embraced in said grant, or the value thereof, or damages for the detention of the same, and any and all rights of action either in law or equity in regard to the same, to have and to hold subject to all outstanding contracts of said party of the first part in regard to the same to him, his heirs, executors, administrators, assigns, and successors, in trust as aforesaid.

Hereby granting and conferring on said party of the second part full power to prosecute or defend all actions or causes of action or proceedings in regard to any of said lands in his name as trustee for the benefit of said trust, as fully as the party of the first part can or may do, and to sell and convey all lands which he may recover



in any such proceedings, and distribute the proceeds of said sales, and all sums realized in said proceedings as hereinafter provided.

To have and to hold to the party of the second part, his heirs and assigns and successors in said trust forever, in trust, nevertheless, and with full power to sell and convey all and singular the lands herein granted and conveyed, and distribute the proceeds thereof after deducting the necessary expenses of said sales and the management of said trust, including a reasonable compensation to said trustee, and all taxes and assessments paid by him, to the several persons herein named, preferred stockholders in said party of the first part, in the proportion that the number of shares of such stock held or owned by said stockholders, respectively, in said party of the first part bears to the entire aggregate of shares of preferred stock of said corporation issued and outstanding, to-wit: \_\_\_\_\_.

And the said party of the first part does hereby covenant with the said party of the second part, his heirs, assigns, and successors in said trust, as follows: First, that it is lawfully seized of said premises; second, that it has good right to convey the same for the use and purposes and in the manner herein expressed; third, that the same are free from all incumbrances; fourth, that the said party of the second part, his heirs, assigns, and successors in said trust shall quietly enjoy and possess the same, and fifth, that the said party of the first part will warrant and defend the title of the same against all lawful claims.

In witness whereof the party of the first part has caused this indenture to be executed by its vice-president and secretary and its corporate seal to be thereto attached, and the party of the second part has set his hand and seal the day and year first above written.

The principle that right or title to lands within the primary limits of grants like that under consideration, found to be vacant, unreserved, and unappropriated at the date of the definite location of the line of route of the railway, then becomes vested in the grantee, is so well established by decisions of the United States Supreme Court as to render numerous citations in support of it unnecessary. The question was fully discussed and the principle again affirmed by the court in the recent case of the *St. Paul and Pacific Railroad Company v. the Northern Pacific Railroad Company* (139 U. S., 1-19, see pp. 4 and 5), and it is there declared, substantially, that neither certificates nor patents are necessary to pass the title to such lands; that they only serve as evidence to show the specific tracts to which title had previously attached by the operation of the granting act.

It is also a well-established rule, laid down in the case of *Schulenberg v. Harriman* (21 Wall., 44), and followed in numerous decisions, that a grantee loses no rights under the grant by failure to complete its road within the period prescribed by the granting act until forfeiture is declared by competent authority.

I am, therefore, of the opinion that title to all lands within the primary limits of the Hastings and Dakota Railway grant, vacant and subject to the grant, became vested in the grantee upon the definite location of the line of road, June 26, 1867, and that, notwithstanding the fact that a portion of the line of road was not constructed within the legal period, no forfeiture of the grant having been declared, such lands are beyond the jurisdiction of and can not be affected by any action that may now be taken by this office or department.

In accordance with this opinion I submitted to you, with my letter of February 18, 1892, for approval on account of said grant, a list containing 26,441.23 acres of lands in the primary limits opposite that portion of the line not constructed in time.

In addition to this quantity 17,602.30 acres of lands, in a similar condition, have been listed for the purposes of said grant, which, with the exception of about 80 acres, are embraced in claims initiated subsequent to the definite location of the line, and action is now being taken to clear the record of these claims with a view to certifying all of said lands for approval by the Department. It is believed that the lists re-

ferred to embrace all of the lands, with the possible exception of a few isolated tracts, to which said grant is entitled, not heretofore certified.

Lists of indemnity lands aggregating about 70,000 acres are pending before this office. Of these lands less than 800 acres were selected prior to the expiration of the three years after the annulment of the company's charter by judicial proceeding as above set forth, and none of the selections or applications to select show compliance with departmental regulations in respect to specification of losses. It appears, therefore, that no legal selections of indemnity land are now pending.

I am of opinion that the right of the Hastings and Dakota Railway Company to assert a claim against the State for lands in the indemnity limits not legally selected prior to that time ceased upon the expiration of the three years from the date of the final judgment, March 23, 1887, by which its charter was annulled; and as the company could not prolong its existence by the appointment of a trustee, or confer upon such trustees powers or rights which it could not itself exercise after the date when it ceased to have an existence, there appears to be no beneficiary upon whom the State can confer the indemnity lands, even though they should be approved to it by the Department, because the State is prohibited by the granting act from applying or disposing of the land to or for any other purpose than that of aiding in the construction of the Hastings and Dakota Railway.

I am therefore of opinion that no legal selection of lands can now be made for the indemnity purposes of this grant.

Very respectfully,

W. M. STONE,  
*Commissioner.*

The SECRETARY OF THE INTERIOR.

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DEPARTMENT OF THE INTERIOR,  
*Washington, December 12, 1892.*

SIR: I am in receipt of your letter of November 26, 1892, making due report in the matter of the progress made upon the adjustment of the grant made by the act of July 4, 1866 (14 Stats., 87), to aid in the construction of the Hastings and Dakota Railroad.

From said report it appears that the charter granted to said company by the State of Minnesota has been forfeited, and you are therefore of the opinion that no legal selection can now be made for indemnity purposes on account of said grant.

There is no case now pending before this Department involving the regularity or legality of selections made for indemnity purposes on account of this grant since the forfeiture of its charter referred to, and until the question arises in an actual case I must refuse to express an opinion thereon.

Any such selections now pending in your office, or hereafter presented, might be made the subject of decision by your office, and the question thus raised in proper manner.

Very respectfully,

JOHN W. NOBLE,  
*Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

